

State of Arizona  
Senate  
Forty-seventh Legislature  
Second Regular Session  
2006

# SENATE BILL 1071

## AN ACT

AMENDING SECTIONS 42-1116, 42-5001, 42-5010, 42-5029 AND 42-5069, ARIZONA REVISED STATUTES; REPEALING SECTION 42-5077, ARIZONA REVISED STATUTES; AMENDING SECTIONS 42-5201 AND 42-5202, ARIZONA REVISED STATUTES; REPEALING TITLE 42, CHAPTER 5, ARTICLE 9, ARIZONA REVISED STATUTES; RELATING TO TAXATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 42-1116, Arizona Revised Statutes, is amended to  
3 read:

4 42-1116. Disposition of tax revenues

5 A. The department shall promptly deposit, pursuant to sections 35-146  
6 and 35-147, all monies it collects from the taxes administered pursuant to  
7 this article except the telecommunication services excise tax, separately  
8 accounting for each type of tax and each tax classification within each type  
9 of tax. At the same time the department of revenue shall also furnish copies  
10 of the transmittal schedules to the director of the department of  
11 administration.

12 B. Except as provided by subsection C of this section, the department  
13 shall deposit all monies and remittances received under this section to the  
14 credit of the following specific funds and accounts:

15 1. Amounts sufficient to meet the requirements for tax refunds to the  
16 tax refund account established in section 42-1117.

17 2. Amounts sufficient to meet the requirements of urban revenue  
18 sharing to the urban revenue sharing fund established in section 43-206.

19 3. Amounts collected pursuant to chapter 5, articles ~~1, AND 5 and 9~~  
20 of this title and section 42-5352, subsection A, to the transaction privilege  
21 and severance tax clearing account established ~~in~~ BY section 42-5029.

22 4. Through June 30, 2010 amounts sufficient to meet the requirements  
23 of section 42-3104 to the corrections fund.

24 5. Amounts sufficient to meet the requirements of section 49-282,  
25 subsection B relating to the water quality assurance revolving fund.

26 6. All remaining monies to the state general fund.

27 C. From the monies and remittances received under this section, each  
28 month beginning July, 2001 the state treasurer shall transmit to the tourism  
29 and sports authority, established by title 5, chapter 8, for deposit in its  
30 facility revenue clearing account established by section 5-834, the greater  
31 of:

32 1. One-twelfth of the amount reported by the department pursuant to  
33 section 43-209.

34 2. Two hundred ninety-two thousand dollars per month for the first  
35 twelve month period, increased in each subsequent twelve month period by an  
36 additional eight per cent over the prior twelve months' distribution.

37 Sec. 2. Section 42-5001, Arizona Revised Statutes, is amended to read:

38 42-5001. Definitions

39 In this article and article 2 of this chapter, unless the context  
40 otherwise requires:

41 1. "Business" includes all activities or acts, personal or corporate,  
42 engaged in or caused to be engaged in with the object of gain, benefit or  
43 advantage, either directly or indirectly, but not casual activities or sales.

44 2. "Distribution base" means the portion of the revenues derived from  
45 the tax levied by this article and articles ~~5, AND 8 and 9~~ of this chapter

1 designated for distribution to counties, municipalities and other purposes  
2 according to section 42-5029, subsection D.

3 3. "Engaging", when used with reference to engaging or continuing in  
4 business, includes the exercise of corporate or franchise powers.

5 4. "Gross income" means the gross receipts of a taxpayer derived from  
6 trade, business, commerce or sales and the value proceeding or accruing from  
7 the sale of tangible personal property or service, or both, and without any  
8 deduction on account of losses.

9 5. "Gross proceeds of sales" means the value proceeding or accruing  
10 from the sale of tangible personal property without any deduction on account  
11 of the cost of property sold, expense of any kind or losses, but cash  
12 discounts allowed and taken on sales are not included as gross income.

13 6. "Gross income" and "gross proceeds of sales" do not include goods,  
14 wares or merchandise, or value thereof, returned by customers if the sale  
15 price is refunded either in cash or by credit, nor the value of merchandise  
16 traded in on the purchase of new merchandise when the trade-in allowance is  
17 deducted from the sales price of the new merchandise before completion of the  
18 sale.

19 7. "Gross receipts" means the total amount of the sale, lease or  
20 rental price, as the case may be, of the retail sales of retailers, including  
21 any services that are a part of the sales, valued in money, whether received  
22 in money or otherwise, including all receipts, cash, credits and property of  
23 every kind or nature, and any amount for which credit is allowed by the  
24 seller to the purchaser without any deduction from the amount on account of  
25 the cost of the property sold, materials used, labor or service performed,  
26 interest paid, losses or any other expense. Gross receipts do not include  
27 cash discounts allowed and taken nor the sale price of property returned by  
28 customers if the full sale price is refunded either in cash or by credit.

29 8. "Person" or "company" includes an individual, firm, partnership,  
30 joint venture, association, corporation, estate or trust, this state, any  
31 county, city, town, district, other than a school district, or other  
32 political subdivision and any other group or combination acting as a unit,  
33 and the plural as well as the singular number.

34 9. "Qualifying community health center":

35 (a) Means an entity that is recognized as nonprofit under section  
36 501(c)(3) of the United States internal revenue code, that is a  
37 community-based, primary care clinic that has a community-based board of  
38 directors and that is either:

39 (i) The sole provider of primary care in the community.

40 (ii) A nonhospital affiliated clinic that is located in a federally  
41 designated medically underserved area in this state.

42 (b) Includes clinics that are being constructed as qualifying  
43 community health centers.

44 10. "Qualifying health care organization" means an entity that is  
45 recognized as nonprofit under section 501(c) of the United States internal

1 revenue code and that uses, saves or invests at least eighty per cent of all  
2 monies that it receives from all sources each year only for health and  
3 medical related educational and charitable services, as documented by annual  
4 financial audits prepared by an independent certified public accountant,  
5 performed according to generally accepted accounting standards and filed  
6 annually with the department. Monies that are used, saved or invested to  
7 lease, purchase or construct a facility for health and medical related  
8 education and charitable services are included in the eighty per cent  
9 requirement.

10 11. "Qualifying hospital" means any of the following:

11 (a) A licensed hospital which is organized and operated exclusively  
12 for charitable purposes, no part of the net earnings of which inures to the  
13 benefit of any private shareholder or individual.

14 (b) A licensed nursing care institution or a licensed residential care  
15 institution or a residential care facility operated in conjunction with a  
16 licensed nursing care institution or a licensed kidney dialysis center, which  
17 provides medical services, nursing services or health related services and is  
18 not used or held for profit.

19 (c) A hospital, nursing care institution or residential care  
20 institution which is operated by the federal government, this state or a  
21 political subdivision of this state.

22 (d) A facility that is under construction and that on completion will  
23 be a facility under subdivision (a), (b) or (c) of this paragraph.

24 12. "Retailer" includes every person engaged in the business classified  
25 under the retail classification pursuant to section 42-5061 and, when in the  
26 opinion of the department it is necessary for the efficient administration of  
27 this article, includes dealers, distributors, supervisors, employers and  
28 salesmen, representatives, peddlers or canvassers as the agents of the  
29 dealers, distributors, supervisors or employers under whom they operate or  
30 from whom they obtain the tangible personal property sold by them, whether in  
31 making sales on their own behalf or on behalf of the dealers, distributors,  
32 supervisors or employers.

33 13. "Sale" means any transfer of title or possession, or both,  
34 exchange, barter, lease or rental, conditional or otherwise, in any manner or  
35 by any means whatever, including consignment transactions and auctions, of  
36 tangible personal property or other activities taxable under this chapter,  
37 for a consideration, and includes:

38 (a) Any transaction by which the possession of property is transferred  
39 but the seller retains the title as security for the payment of the price.

40 (b) Fabricating tangible personal property for consumers who furnish  
41 either directly or indirectly the materials used in the fabrication work.

42 (c) Furnishing, preparing or serving for a consideration any tangible  
43 personal property consumed on the premises of the person furnishing,  
44 preparing or serving the tangible personal property.

14. "Solar daylighting" means a device that is specifically designed to capture and redirect the visible portion of the solar beam, while controlling the infrared portion, for use in illuminating interior building spaces in lieu of artificial lighting.

15. "Solar energy device" means a system or series of mechanisms designed primarily to provide heating, to provide cooling, to produce electrical power, to produce mechanical power, to provide solar daylighting or to provide any combination of the foregoing by means of collecting and transferring solar generated energy into such uses either by active or passive means, including wind generator systems that produce electricity. Solar energy systems may also have the capability of storing solar energy for future use. Passive systems shall clearly be designed as a solar energy device, such as a trombe wall, and not merely as a part of a normal structure, such as a window.

16. "Tangible personal property" means personal property which may be seen, weighed, measured, felt or touched or is in any other manner perceptible to the senses.

17. "Tax year" or "taxable year" means either the calendar year or the taxpayer's fiscal year, if permission is obtained from the department to use a fiscal year as the tax period instead of the calendar year.

18. "Taxpayer" means any person who is liable for any tax which is imposed by this article.

19. "Wholesaler" or "jobber" means any person who sells tangible personal property for resale and not for consumption by the purchaser.

Sec. 3. Section 42-5010, Arizona Revised Statutes, is amended to read:

42-5010. Rates: distribution base

A. The tax imposed by this article is levied and shall be collected at the following rates:

1. Five per cent of the tax base as computed for the business of every person engaging or continuing in this state in the following business classifications described in article 2 of this chapter:

- (a) Transporting classification.
- (b) Utilities classification.
- (c) Telecommunications classification.
- (d) Pipeline classification.
- (e) Private car line classification.
- (f) Publication classification.
- (g) Job printing classification.
- (h) Prime contracting classification.
- (i) Owner builder sales classification.
- (j) Amusement classification.
- (k) Restaurant classification.
- (l) Personal property rental classification.
- (m) Retail classification.

~~(n) Membership camping classification.~~

1           2. Five and one-half per cent of the tax base as computed for the  
2 business of every person engaging or continuing in this state in the  
3 transient lodging classification described in section 42-5070.

4           3. Three and one-eighth per cent of the tax base as computed for the  
5 business of every person engaging or continuing in this state in the mining  
6 classification described in section 42-5072.

7           4. Zero per cent of the tax base as computed for the business of every  
8 person engaging or continuing in this state in the commercial lease  
9 classification described in section 42-5069.

10          B. Twenty per cent of the tax revenues collected at the rate  
11 prescribed by subsection A, paragraph 1 of this section from persons on  
12 account of engaging in business under the business classifications listed in  
13 subsection A, paragraph 1, subdivisions (a) through (i) of this section is  
14 designated as distribution base for purposes of section 42-5029.

15          C. Forty per cent of the tax revenues collected at the rate prescribed  
16 by subsection A, paragraph 1 of this section from persons on account of  
17 engaging in business under the business classifications listed in subsection  
18 A, paragraph 1, subdivisions (j) through ~~(n)~~ (m) of this section is  
19 designated as distribution base for purposes of section 42-5029.

20          D. Thirty-two per cent of the tax revenues collected from persons on  
21 account of engaging in business under the business classification listed in  
22 subsection A, paragraph 3 of this section is designated as distribution base  
23 for purposes of section 42-5029.

24          E. Fifty-three and one-third per cent of the tax revenues collected  
25 from persons on account of engaging in business under the business  
26 classification listed in subsection A, paragraph 4 of this section is  
27 designated as distribution base for purposes of section 42-5029.

28          F. Fifty per cent of the tax revenues collected from persons on  
29 account of engaging in business under the business classification listed in  
30 subsection A, paragraph 2 of this section is designated as distribution base  
31 for purposes of section 42-5029.

32          G. In addition to the rates prescribed by subsection A of this  
33 section, if approved by the qualified electors voting at a statewide general  
34 election, an additional rate increment is imposed and shall be collected  
35 through June 30, 2021. The taxpayer shall pay taxes pursuant to this  
36 subsection at the same time and in the same manner as under subsection A of  
37 this section. The department shall separately account for the revenues  
38 collected with respect to the rates imposed pursuant to this subsection and  
39 the state treasurer shall distribute all of those revenues in the manner  
40 prescribed by section 42-5029, subsection E. The rates imposed pursuant to  
41 this subsection shall not be considered local revenues for purposes of  
42 article IX, section 21, Constitution of Arizona. The additional tax rate  
43 increment is levied at the rate of six-tenths of one per cent of the tax base  
44 of every person engaging or continuing in this state in a business  
45 classification listed in subsection A, paragraph 1 of this section.

1 H. Any increase in the rate of tax that is imposed by this chapter and  
2 that is enacted by the legislature or by a vote of the people does not apply  
3 with respect to contracts entered into by prime contractors or pursuant to  
4 written bids made by prime contractors on or before the effective date of the  
5 legislation or the date of the election enacting the increase. To qualify  
6 for the exemption under this subsection, the prime contractor must maintain  
7 sufficient documentation, in a manner and form prescribed by the department,  
8 to verify the date of the contract or written bid.

9 I. For taxpayers taxable under this chapter other than prime  
10 contractors taxable pursuant to section 42-5075:

11 1. Any increase in the rate of tax that is levied by this article or  
12 article 2 of this chapter enacted by the legislature or by a vote of the  
13 people does not apply for a period of one hundred twenty days from the date  
14 of the tax rate increase to the gross proceeds of sales or gross income from  
15 the business of the taxpayer with respect to written contracts entered into  
16 before the effective date of the tax rate increase unless the taxpayer has  
17 entered into a contract that contains a provision that entitles the taxpayer  
18 to recover from the purchaser the amount of the additional tax levied.

19 2. The provisions of this subsection apply without regard to the  
20 accounting method used by the taxpayer to report the taxes imposed under  
21 article 2 of this chapter.

22 3. The provisions of this subsection shall not be considered in  
23 determining the rate of tax imposed under chapter 6, article 3 of this title.

24 Sec. 4. Section 42-5029, Arizona Revised Statutes, is amended to read:

25 42-5029. Remission and distribution of monies; definition

26 A. The department shall deposit, pursuant to sections 35-146 and  
27 35-147, all revenues collected under this article and articles 4, 5, ~~AND 8~~  
28 ~~and 9~~ of this chapter pursuant to section 42-1116, separately accounting for:

29 1. Payments of estimated tax under section 42-5014, subsection D.

30 2. Revenues collected pursuant to section 42-5070.

31 3. Revenues collected under this article and article 5 of this chapter  
32 from and after June 30, 2000 from sources located on Indian reservations in  
33 this state.

34 4. Revenues collected pursuant to section 42-5010, subsection G and  
35 section 42-5155, subsection D.

36 B. The department shall credit payments of estimated tax to an  
37 estimated tax clearing account and each month shall transfer all monies in  
38 the estimated tax clearing account to a fund designated as the transaction  
39 privilege and severance tax clearing account. The department shall credit  
40 all other payments to the transaction privilege and severance tax clearing  
41 account, separately accounting for the monies designated as distribution base  
42 under sections 42-5010, 42-5164, 42-5205, ~~AND 42-5353 and 42-5409~~. Each  
43 month the department shall report to the state treasurer the amount of monies  
44 collected pursuant to this article and articles 4, 5, ~~AND 8 and 9~~ of this  
45 chapter.

1 C. On notification by the department, the state treasurer shall  
2 distribute the monies deposited in the transaction privilege and severance  
3 tax clearing account in the manner prescribed by this section and by sections  
4 42-5164, 42-5205, ~~AND~~ 42-5353 ~~and 42-5409~~, after deducting warrants drawn  
5 against the account pursuant to sections 42-1118 and 42-1254.

6 D. Of the monies designated as distribution base the department shall:  
7 1. Pay twenty-five per cent to the various incorporated municipalities  
8 in this state in proportion to their population to be used by the  
9 municipalities for any municipal purpose.

10 2. Pay 38.08 per cent to the counties in this state by averaging the  
11 following proportions:

12 (a) The proportion that the population of each county bears to the  
13 total state population.

14 (b) The proportion that the distribution base monies collected during  
15 the calendar month in each county under this article, section 42-5164,  
16 subsection B, section 42-5205, subsection B and ~~sections~~ SECTION 42-5353 ~~and~~  
17 ~~42-5409~~ bear to the total distribution base monies collected under this  
18 article, section 42-5164, subsection B, section 42-5205, subsection B and  
19 ~~sections~~ SECTION 42-5353 ~~and 42-5409~~ throughout the state for the calendar  
20 month.

21 3. Pay an additional 2.43 per cent to the counties in this state as  
22 follows:

23 (a) Average the following proportions:

24 (i) The proportion that the assessed valuation used to determine  
25 secondary property taxes of each county, after deducting that part of the  
26 assessed valuation that is exempt from taxation at the beginning of the month  
27 for which the amount is to be paid, bears to the total assessed valuations  
28 used to determine secondary property taxes of all the counties after  
29 deducting that portion of the assessed valuations that is exempt from  
30 taxation at the beginning of the month for which the amount is to be paid.  
31 Property of a city or town that is not within or contiguous to the municipal  
32 corporate boundaries and from which water is or may be withdrawn or diverted  
33 and transported for use on other property is considered to be taxable  
34 property in the county for purposes of determining assessed valuation in the  
35 county under this item.

36 (ii) The proportion that the distribution base monies collected during  
37 the calendar month in each county under this article, section 42-5164,  
38 subsection B, section 42-5205, subsection B and ~~sections~~ SECTION 42-5353 ~~and~~  
39 ~~42-5409~~ bear to the total distribution base monies collected under this  
40 article, section 42-5164, subsection B, section 42-5205, subsection B and  
41 ~~sections~~ SECTION 42-5353 ~~and 42-5409~~ throughout the state for the calendar  
42 month.

43 (b) If the proportion computed under subdivision (a) of this paragraph  
44 for any county is greater than the proportion computed under paragraph 2 of  
45 this subsection, the department shall compute the difference between the



1 amount distributed to that county under paragraph 2 of this subsection and  
2 the amount that would have been distributed under paragraph 2 of this  
3 subsection using the proportion computed under subdivision (a) of this  
4 paragraph and shall pay that difference to the county from the amount  
5 available for distribution under this paragraph. Any monies remaining after  
6 all payments under this subdivision shall be distributed among the counties  
7 according to the proportions computed under paragraph 2 of this subsection.

8 4. After any distributions required by sections 42-5030, 42-5030.01,  
9 42-5031, 42-5032 and 42-5032.01, and after making any transfer to the water  
10 quality assurance revolving fund as required by section 49-282, subsection B,  
11 credit the remainder of the monies designated as distribution base to the  
12 state general fund. From this amount:

13 (a) The legislature shall annually appropriate to:

14 (i) The department of revenue sufficient monies to administer and  
15 enforce this article and articles 5, ~~AND 8 and 9~~ of this chapter.

16 (ii) The department of economic security monies to be used for the  
17 purposes stated in title 46, chapter 1.

18 (iii) The Arizona arts endowment fund established by section 41-986,  
19 the full amount by which revenues derived from the amusement classification  
20 pursuant to section 42-5073 for the current fiscal year exceed the revenues  
21 that were derived from that classification in fiscal year 1993-1994, except  
22 that this amount shall not exceed two million dollars through fiscal year  
23 2008-2009.

24 (iv) The firearms safety and ranges fund established by section  
25 17-273, fifty thousand dollars derived from the taxes collected from the  
26 retail classification pursuant to section 42-5061 for the current fiscal  
27 year.

28 (b) The state treasurer shall transfer to the tourism fund an amount  
29 equal to the sum of the following:

30 (i) Three and one-half per cent of the gross revenues derived from the  
31 transient lodging classification pursuant to section 42-5070 during the  
32 preceding fiscal year.

33 (ii) Three per cent of the gross revenues derived from the amusement  
34 classification pursuant to section 42-5073 during the preceding fiscal year.

35 (iii) Two per cent of the gross revenues derived from the restaurant  
36 classification pursuant to section 42-5074 during the preceding fiscal year.

37 E. If approved by the qualified electors voting at a statewide general  
38 election, all monies collected pursuant to section 42-5010, subsection G and  
39 section 42-5155, subsection D shall be distributed each fiscal year pursuant  
40 to this subsection. The monies distributed pursuant to this subsection are  
41 in addition to any other appropriation, transfer or other allocation of  
42 public or private monies from any other source and shall not supplant,  
43 replace or cause a reduction in other school district, charter school,  
44 university or community college funding sources. The monies shall be  
45 distributed as follows:

1           1. If there are outstanding state school facilities revenue bonds  
2 pursuant to title 15, chapter 16, article 7, each month one-twelfth of the  
3 amount that is necessary to pay the fiscal year's debt service on outstanding  
4 state school improvement revenue bonds for the current fiscal year shall be  
5 transferred each month to the school improvement revenue bond debt service  
6 fund established by section 15-2084. The total amount of bonds for which  
7 these monies may be allocated for the payment of debt service shall not  
8 exceed a principal amount of eight hundred million dollars exclusive of  
9 refunding bonds and other refinancing obligations.

10           2. After any transfer of monies pursuant to paragraph 1 of this  
11 subsection, twelve per cent of the remaining monies collected during the  
12 preceding month shall be transferred to the technology and research  
13 initiative fund established by section 15-1648 to be distributed among the  
14 universities for the purpose of investment in technology and research-based  
15 initiatives.

16           3. After the transfer of monies pursuant to paragraph 1 of this  
17 subsection, three per cent of the remaining monies collected during the  
18 preceding month shall be transferred to the workforce development account  
19 established in each community college district pursuant to section 15-1472  
20 for the purpose of investment in workforce development programs.

21           4. After transferring monies pursuant to paragraphs 1, 2 and 3 of this  
22 subsection, one-twelfth of the amount a community college that is owned,  
23 operated or chartered by a qualifying Indian tribe on its own Indian  
24 reservation would receive pursuant to section 15-1472, subsection D,  
25 paragraph 2 if it were a community college district shall be distributed each  
26 month to the treasurer or other designated depository of a qualifying Indian  
27 tribe. Monies distributed pursuant to this paragraph are for the exclusive  
28 purpose of providing support to one or more community colleges owned,  
29 operated or chartered by a qualifying Indian tribe and shall be used in a  
30 manner consistent with section 15-1472, subsection B. For purposes of this  
31 paragraph, "qualifying Indian tribe" has the same meaning as defined in  
32 section 42-5031.01, subsection D.

33           5. After transferring monies pursuant to paragraphs 1, 2 and 3 of this  
34 subsection, one-twelfth of the following amounts shall be transferred each  
35 month to the department of education for the increased cost of basic state  
36 aid under section 15-971 due to added school days and associated teacher  
37 salary increases enacted in 2000:

- 38           (a) In fiscal year 2001-2002, \$15,305,900.  
39           (b) In fiscal year 2002-2003, \$31,530,100.  
40           (c) In fiscal year 2003-2004, \$48,727,700.  
41           (d) In fiscal year 2004-2005, \$66,957,200.  
42           (e) In fiscal year 2005-2006 and each fiscal year thereafter,  
43 \$86,280,500.

44           6. After transferring monies pursuant to paragraphs 1, 2 and 3 of this  
45 subsection, seven million eight hundred thousand dollars is appropriated each

1 fiscal year, to be paid in monthly installments, to the department of  
2 education to be used for school safety as provided in section 15-154 and two  
3 hundred thousand dollars is appropriated each fiscal year, to be paid in  
4 monthly installments to the department of education to be used for the  
5 character education matching grant program as provided in section 15-154.01.

6 7. After transferring monies pursuant to paragraphs 1, 2 and 3 of this  
7 subsection, no more than seven million dollars may be appropriated by the  
8 legislature each fiscal year to the department of education to be used for  
9 accountability purposes as described in section 15-241 and title 15, chapter  
10 9, article 8.

11 8. After transferring monies pursuant to paragraphs 1, 2 and 3 of this  
12 subsection, one million five hundred thousand dollars is appropriated each  
13 fiscal year, to be paid in monthly installments, to the failing schools  
14 tutoring fund established by section 15-241.

15 9. After transferring monies pursuant to paragraphs 1, 2 and 3 of this  
16 subsection, twenty-five million dollars shall be transferred each fiscal year  
17 to the state general fund to reimburse the general fund for the cost of the  
18 income tax credit allowed by section 43-1072.01.

19 10. After the payment of monies pursuant to paragraphs 1 through 9 of  
20 this subsection, the remaining monies collected during the preceding month  
21 shall be transferred to the classroom site fund established by section  
22 15-977. The monies shall be allocated as follows in the manner prescribed by  
23 section 15-977:

24 (a) Forty per cent shall be allocated for teacher compensation based  
25 on performance.

26 (b) Twenty per cent shall be allocated for increases in teacher base  
27 compensation and employee related expenses.

28 (c) Forty per cent shall be allocated for maintenance and operation  
29 purposes.

30 F. The department shall credit the remainder of the monies in the  
31 transaction privilege and severance tax clearing account to the state general  
32 fund, subject to any distribution required by section 42-5030.01.

33 G. Notwithstanding subsection D of this section, if a court of  
34 competent jurisdiction finally determines that tax monies distributed under  
35 this section were illegally collected under this article or articles 5, ~~AND~~  
36 ~~8 and 9~~ of this chapter and orders the monies to be refunded to the taxpayer,  
37 the department shall compute the amount of such monies that was distributed  
38 to each city, town and county under this section. The department shall  
39 notify the state treasurer of that amount plus the proportionate share of  
40 additional allocated costs required to be paid to the taxpayer. Each city's,  
41 town's and county's proportionate share of the costs shall be based on the  
42 amount of the original tax payment each municipality and county received.  
43 Each month the state treasurer shall reduce the amount otherwise  
44 distributable to the city, town and county under this section by one  
45 thirty-sixth of the total amount to be recovered from the city, town or

1 county until the total amount has been recovered, but the monthly reduction  
2 for any city, town or county shall not exceed ten per cent of the full  
3 monthly distribution to that entity. The reduction shall begin for the first  
4 calendar month after the final disposition of the case and shall continue  
5 until the total amount, including interest and costs, has been recovered.

6 H. On receiving a certificate of default from the greater Arizona  
7 development authority pursuant to section 41-1554.06 or 41-1554.07 and to the  
8 extent not otherwise expressly prohibited by law, the state treasurer shall  
9 withhold from the next succeeding distribution of monies pursuant to this  
10 section due to the defaulting political subdivision the amount specified in  
11 the certificate of default and immediately deposit the amount withheld in the  
12 greater Arizona development authority revolving fund. The state treasurer  
13 shall continue to withhold and deposit the monies until the greater Arizona  
14 development authority certifies to the state treasurer that the default has  
15 been cured. In no event may the state treasurer withhold any amount that the  
16 defaulting political subdivision certifies to the state treasurer and the  
17 authority as being necessary to make any required deposits then due for the  
18 payment of principal and interest on bonds of the political subdivision that  
19 were issued before the date of the loan repayment agreement or bonds and that  
20 have been secured by a pledge of distributions made pursuant to this section.

21 I. Except as provided by sections 42-5033 and 42-5033.01, the  
22 population of a county, city or town as determined by the most recent United  
23 States decennial census plus any revisions to the decennial census certified  
24 by the United States bureau of the census shall be used as the basis for  
25 apportioning monies pursuant to subsection D of this section.

26 J. For the purposes of this section, "community college district"  
27 means a community college district **THAT IS** established pursuant to sections  
28 15-1402 and 15-1403 **AND** that is a political subdivision of this state.

29 Sec. 5. Section 42-5069, Arizona Revised Statutes, is amended to read:  
30 **42-5069. Commercial lease classification; definitions**

31 A. The commercial lease classification is comprised of the business of  
32 leasing for a consideration the use or occupancy of real property.

33 B. A person who, as a lessor, leases or rents for a consideration  
34 under one or more leases or rental agreements the use or occupancy of real  
35 property that is used by the lessee for commercial purposes is deemed to be  
36 engaged in business and subject to the tax imposed by article 1 of this  
37 chapter, but this subsection does not include leases or rentals of real  
38 property used for residential or agricultural purposes.

39 C. The commercial lease classification does not include:

40 1. Any business activities ~~which~~ **THAT** are classified under the  
41 transient lodging classification.

42 2. Activities engaged in by the Arizona exposition and state fair  
43 board or county fair commissions in connection with events sponsored by those  
44 entities.

1           3. Leasing real property to a lessee who subleases the property if the  
2 lessee is engaged in business classified under the commercial lease  
3 classification or the transient lodging classification.

4           4. Leasing real property pursuant to a written lease agreement entered  
5 into before December 1, 1967. This exclusion does not apply to:—

6           ~~(a)~~ the businesses of hotels, guest houses, dude ranches and resorts,  
7 rooming houses, apartment houses, office buildings, automobile storage  
8 garages, parking lots or tourist camps, or to the extension or renewal of any  
9 such written lease agreement.

10           ~~(b) Any such written lease agreement unless a rental occupancy tax is~~  
11 ~~paid pursuant to article 9 of this chapter.~~

12           5. Leasing real property by a corporation to an affiliated  
13 corporation. For THE purposes of this paragraph, "affiliated corporation"  
14 means a corporation ~~which~~ THAT owns or controls at least eighty per cent of  
15 the lessor, THAT is at least eighty per cent owned or controlled by the  
16 lessor or THAT is at least eighty per cent owned or controlled by a  
17 corporation ~~which~~ THAT also owns or controls at least eighty per cent of the  
18 lessor. Ownership and control are determined by reference to the voting  
19 shares of a corporation.

20           6. Leasing real property for sublease if the tenant in possession of  
21 the property is subject to the rental occupancy tax pursuant to article 9 of  
22 this chapter.

23           7. Leasing real property for boarding horses.

24           8. Leasing or renting real property or the right to use real property  
25 at exhibition events in this state sponsored, operated or conducted by a  
26 nonprofit organization that is exempt from taxation under section 501(c)(3),  
27 501(c)(4) or 501(c)(6) of the internal revenue code if the organization is  
28 associated with major league baseball teams or a national touring  
29 professional golfing association and no part of the organization's net  
30 earnings inures to the benefit of any private shareholder or individual.

31           9. Leasing or renting real property or the right to use real property  
32 for use as a rodeo featuring primarily farm and ranch animals in this state  
33 sponsored, operated or conducted by a nonprofit organization that is exempt  
34 from taxation under section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or  
35 501(c)(8) of the internal revenue code and no part of the organization's net  
36 earnings inures to the benefit of any private shareholder or individual.

37           10. Leasing or renting dwelling units, lodging facilities or trailer or  
38 mobile home spaces if the units, facilities or spaces are intended to serve  
39 as the principal or permanent place of residence for the lessee or renter or  
40 if the unit, facility or space is leased or rented to a single tenant thirty  
41 or more consecutive days.

42           11. Leasing or renting real property and improvements for use primarily  
43 for religious worship by a nonprofit organization that is exempt from  
44 taxation under section 501(c)(3) of the internal revenue code and no part of

1 the organization's net earnings inures to the benefit of any private  
2 shareholder or individual.

3 12. Leasing or renting real property used for agricultural purposes  
4 under either of the following circumstances:

5 (a) The lease or rental is between family members, trusts, estates,  
6 corporations, partnerships, joint venturers or similar entities, or any  
7 combination thereof, if the individuals or at least eighty per cent of the  
8 beneficiaries, shareholders, partners or joint venturers share a family  
9 relationship as parents or ancestors of parents, children or descendants of  
10 children, siblings, cousins of the first degree, aunts, uncles, nieces or  
11 nephews of the first degree, spouses of any of the listed relatives and  
12 listed relatives by the half-blood or by adoption.

13 (b) The lessor leases or rents real property used for agricultural  
14 purposes under no more than three leases or rental agreements.

15 13. Leasing, renting or granting the right to use real property to  
16 vendors or exhibitors by a trade or industry association ~~which~~ THAT is a  
17 qualifying organization pursuant to section 513(d)(3)(C) of the internal  
18 revenue code for a period not to exceed twenty-one days in connection with an  
19 event that meets all of the following conditions:

20 (a) ~~Where~~ The majority of such vending or exhibition activities relate  
21 to the nature of THE trade or business sponsoring the event.

22 (b) The event is held in conjunction with a formal business meeting of  
23 the trade or industry association.

24 (c) The event is organized by the persons engaged in the particular  
25 trade or industry.

26 14. Leasing, renting or granting the right to use real property for a  
27 period not to exceed twenty-one days by a coliseum, civic center, civic  
28 plaza, convention center, auditorium or arena owned by this state or any of  
29 its political subdivisions.

30 15. Leasing or subleasing real property used by a nursing care  
31 institution as defined in section 36-401 that is licensed pursuant to title  
32 36, chapter 4.

33 16. Leasing or renting a transportation facility as provided in section  
34 28-7705, subsections A and B.

35 17. Granting or providing rights to real property that constitute a  
36 profit à prendre for the severance of minerals, including all rights to use  
37 the surface or subsurface of the property as is necessary or convenient to  
38 the right to sever the minerals. This paragraph does not exclude from the  
39 commercial lease classification leasehold rights to the real property that  
40 are granted in addition to and not included within the right of profit à  
41 prendre, but the tax base for the grant of such a leasehold right, if the  
42 gross income derived from the grant is not separately stated from the gross  
43 income derived from the grant of the profit à prendre, shall not exceed the  
44 fair market value of the leasehold rights computed after excluding the value  
45 of all rights under the profit à prendre. ~~As used in~~ FOR THE PURPOSES OF

1 this paragraph, "profit à prendre" means a right to use the land of another  
2 to mine minerals, and carries with it the right of entry and the right to  
3 remove and take the minerals from the land and also includes the right to use  
4 the surface of the land as is necessary and convenient for exercise of the  
5 profit.

6 D. The tax base for the commercial lease classification is the gross  
7 proceeds of sales or gross income derived from the business, but  
8 reimbursements to the lessor for utility service shall be deducted from the  
9 tax base.

10 E. Notwithstanding section 42-1104, subsection B, paragraph 1,  
11 subdivision (b) and paragraph 2, the failure to file tax returns for the  
12 commercial lease classification that report gross income derived from any  
13 agreement that constitutes, in whole or in part, a grant of a right of profit  
14 à prendre for the severance of minerals does not constitute an exception to  
15 the general rule for the statute of limitations.

16 F. For THE purposes of this section:

17 1. "Leasing" includes renting.

18 2. "Real property" includes any improvements, rights or interest in  
19 such property.

20 Sec. 6. Repeal

21 Section 42-5077, Arizona Revised Statutes, is repealed.

22 Sec. 7. Section 42-5201, Arizona Revised Statutes, is amended to read:

23 42-5201. Definitions

24 In this article, unless the context otherwise requires:

25 1. "Gross value of production" means the sum of the value of  
26 production determined for each metalliferous mineral mined by the severer.

27 2. "Metallic product" means any metalliferous mineral or metalliferous  
28 mineral product.

29 3. "Metalliferous mineral" means copper, gold, silver, molybdenum or  
30 other metal or any ore or substance containing such metals including  
31 turquoise that is severed within this state.

32 4. "Metalliferous mineral product" means the material resulting from  
33 the processing of a metalliferous mineral including any concentrate of an  
34 ore, any precipitate of a metalliferous mineral or any metal bullion.

35 5. "Mining" means the activity of extracting from the earth substances  
36 that become metalliferous minerals and:

37 (a) In the case of ore that is customarily milled, concentrated,  
38 agitation leached, or vat leached, mining includes all activity from the  
39 breaking of ground to the delivery of ore to the primary crusher, including  
40 blasting, loading, hauling, including hauling of waste, and dumping. The  
41 quantity mined shall be measured after final crushing.

42 (b) In the case of ore that is not customarily milled, concentrated,  
43 agitation leached, or vat leached, mining includes all activity from the  
44 breaking of ground to the delivery of the ore to the reduction works, or if  
45 the reduction works are located away from the situs of the mining activity,

1 to the point at which the ore is loaded on a means of transport to the  
2 reduction works. The quantity mined shall be measured upon delivery to the  
3 reduction works, or if the reduction works are located away from the situs of  
4 mining activity, upon loading on a means of transport to the reduction works.

5 (c) In the case of dump or in situ leaching where the leach liquor is  
6 precipitated, mining includes all activity from the breaking of ground, if  
7 any, to the delivery of the leach liquor to the facility at which  
8 precipitation takes place. The quantity mined shall be measured upon  
9 precipitation.

10 (d) In the case of dump or in situ leaching where the leach liquor is  
11 converted through a chemical, electrolytic or other means directly from a  
12 liquor to a solid metallic mass, mining includes all activity from the  
13 breaking of ground, if any, to the delivery of the leach liquor to the  
14 solvent extraction or similar facility. The quantity mined shall be measured  
15 upon delivery to the solvent extraction facility.

16 6. "Mining costs" means production costs incurred in mining.

17 7. "Out-of-state processing costs" means processing costs incurred by  
18 the severer out of this state including freight charges incurred for shipping  
19 metallic products out of this state.

20 8. "Price" means the per unit consideration a severer receives from  
21 the sale during the reporting period of a metallic product whether sold  
22 within or without this state. If a severer engages in manufacturing,  
23 fabricating or other transforming activities of a refined metalliferous  
24 mineral product before making a sale, the charges made by the severer for  
25 such activities shall not be a part of the consideration in establishing the  
26 price. If no sales occurred during the reporting period, price shall be  
27 derived from the last reporting period in which sales occurred.

28 9. "Processing" means any non-mining activity that transforms  
29 metalliferous minerals into metalliferous mineral products including  
30 precipitating, crushing, concentrating, smelting and refining. "Processing"  
31 does not include manufacturing or fabrication or other transformation  
32 activities beyond refining.

33 10. "Processing costs" means production costs other than mining costs.

34 11. "Production costs" means the costs incurred by the severer in  
35 mining and processing until the point of sale including but not limited to  
36 energy, fuel, labor, supplies, depreciation, transportation and other  
37 expenses reasonably allocable to mining or processing including but not  
38 limited to labor benefits, property taxes, lease payments for equipment used  
39 in mining or processing and support services such as maintenance, security  
40 and administration if such services are site specific. Production costs also  
41 include selling expenses but do not include severance taxes or depletion  
42 expenses. Production costs also do not include corporate salary and office  
43 expenses, income taxes, interest expense on debt or corporate capital  
44 charges.



12. "Recoverable units" means metalliferous mineral units based on processing or contractual recoveries during the period of production.

13. "Sale" shall have the meaning ascribed to it in section 42-5001.

14. "Severer" means a person engaging in the business of mining ~~or timbering.~~

15. "Severing" means mining ~~or timbering.~~

~~16. "Timber product" means poles, saw logs, pulpwood or firewood which result from timbering.~~

~~17. "Timbering" includes all activities of a severer within this state resulting in the production of a timber product, including felling, limbing, bucking, skidding, loading and all activities ordinarily required under the terms of United States forest service timber contracts granted under 36 Code of Federal Regulations section 223.1, whether performed by the severer or a contractor of the severer.~~

~~18.~~ 16. "Value of production" means the price multiplied by the recoverable units of a metallic product mined by the severer.

Sec. 8. Section 42-5202, Arizona Revised Statutes, is amended to read:

42-5202. Levy of tax

A. There is levied on any severer, and the department shall collect, an excise tax, denominated as a severance tax.

B. Except as provided in section 42-5203, the severance tax is in lieu of any other tax imposed upon the activities of ~~timbering or~~ mining and processing by article 1 of this chapter.

C. The amount of the severance tax levied on a severer engaging in the business of mining shall be determined by multiplying the net severance base by two and one-half per cent.

~~D. The amount of the severance tax levied on a severer engaging in the business of timbering shall be:~~

~~1. Two dollars thirteen cents per thousand board feet for timber products that are derived from ponderosa pine.~~

~~2. One dollar fifty one cents per thousand board feet for timber products derived from all species except ponderosa pine.~~

Sec. 9. Repeal

Title 42, chapter 5, article 9, Arizona Revised Statutes, is repealed.

Sec. 10. Effective date

This act is effective from and after October 31, 2006.